

# STATE OF MONTANA TERM CONTRACT

Department of Administration  
State Procurement Bureau  
165 Mitchell Building  
PO Box 200135  
Helena, MT 59620-0135  
Phone: (406) 444-2575 Fax: (406) 444-2529  
TTY Users-Dial 711  
<http://www.discoveringmontana.com/doa/gsd>

**T.C. #: SPB05-937B**

**Title: Small Project Professional IT Service Providers**

**This is a non-exclusive contract.**

CONTRACT TERM	FROM	November 1, 2004	CONTRACT STATUS	NEW (x)
	TO	October 31, 2006		RENEW ( )
VENDOR ADDRESS	VARIOUS - SEE "REMARKS" BELOW		ORDER ADDRESS	
ATTN:			ATTN:	
PHONE:			PHONE:	
FAX:			FAX:	
E-MAIL:			E-MAIL:	

PRICES: PER CONTRACT AGREEMENT

DELIVERY: PER CONTRACT AGREEMENT

F.O.B.: DESTINATION

TERMS: NET 30 DAYS OR AS AGREED UPON

REMARKS: A complete list of contractors and rates can be found at the following site:  
<http://discoveringmontana.com/itsd/contract/MISservices.asp>

Agencies must submit an IT Procurement Request Form to the Procurement Services Bureau of the Information Technology Services Division.

IFB/RFP No.: SPB05-937B

Brad Sanders, CONTRACTS OFFICER

DATE:

**AUTHORIZED SIGNATURE**

## STANDARD TERMS AND CONDITIONS

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

### **ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:**

The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

**AUTHORITY:** The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**COMPLIANCE WITH LAWS:** The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

**COOPERATIVE PURCHASING:** Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

**DEBARMENT:** The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations **ONLY** if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are **ONLY** accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

**HOLD HARMLESS/INDEMNIFICATION:** The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to

assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. §

18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

**UNAVAILABILITY OF FUNDING:** The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

**WARRANTIES:** The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

1. Parties
2. Effective Date, Duration and Renewal
3. Services and/or Supplies
4. Statement of Work
5. Consideration/Payment
6. Access and Retention of Records
7. Assignment, Transfer and Subcontracting
8. Hold Harmless/Indemnification
9. Required Insurance
10. Compliance with Workers' Compensation Act
11. Compliance with Laws
12. Intellectual Property/Ownership
13. Patent and Copyright Protection
14. Contract Oversight
15. Contract Termination
16. Event of Breach – Remedies
17. Waiver of Breach
18. State Personnel
19. Contractor Personnel
20. Meetings and Reports
21. Contractor Performance Assessments
22. Transition Assistance
23. Cooperative Purchasing
24. Choice of Law and Venue
25. Scope, Amendment and Interpretation
26. Execution

## **SMALL PROJECT PROFESSIONAL IT SERVICE PROVIDERS**

### **1. PARTIES**

This contract, is entered into by and between the State of Montana, Department of Administration, Information Technology Services Division, whose address and phone number are 118 N. Roberts, Annex Building, Helena, MT. 59620 and (406) 444-2700 and the listing of contractors identified at the following website: <http://discoveringmontana.com/itsd/contract/MISservices.asp>, (hereinafter referred to as the "Contractor").

**THE PARTIES AGREE AS FOLLOWS:**

### **2. EFFECTIVE DATE, DURATION, AND RENEWAL**

**2.1 Contract Term.** This contract shall take effect on November 1, 2004. The Contract shall terminate on October 31, 2006, unless terminated earlier in accordance with the terms of this Contract. (Mont. Code Ann. § 18-4-313.)

### **3. SERVICES AND/OR SUPPLIES**

Contractor agrees to provide to state agencies the IT services described in SPB05-937B, within the service areas offered by the Contractor and accepted by the State.

### **4. STATEMENT OF WORK**

All services shall be performed pursuant to the terms of this Contract and shall be documented in a Statement of Work (SOW) established between Purchasing Agency and Contractor. The SOW must accompany the Agency IT Procurement Request (previously work order) that must be submitted and approved by ITSD before any project work begins.

The SOW must at a minimum:

- Reference this Contract number [SPB05-937B];
- Define project or task objectives;
- Describe the scope of services or work to be performed;
- Clearly identify deliverables;
- Define acceptance criteria for the acceptance of deliverables/phases;
- Specify a timeline and period of performance;
- Specify compensation and payment, e.g., the hourly rate and total Contractor hours to be provided or the fixed price for a deliverable, (whichever is applicable), total cost of the project, and reimbursable Contractor expenses;
- Identify Project Managers for the Contractor and the Agency;
- Describe Contractor staff roles and responsibilities;
- Describe Agency staff roles and responsibilities;
- Provide signature block for both parties.

The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

## **5. CONSIDERATION/PAYMENT**

**5.1** In consideration for the services to be provided, the ordering agency will pay a properly executed invoice for accepted services and/or products. The final payment, plus retainer (if applicable), will be paid in receipt of a properly executed invoice and upon acceptance of completed project. The Contractor will bill each agency directly for services provided.

**5.2** Services provided for any project may be charged on a time and materials or fixed price basis. The purchasing agency has the right to determine how the project will be charged.

**5.3** The Contractor will indicate the number of hours, the name, the hourly rate for each assigned staff, and the total charges for all staff, and total charges for the entire project. Both current and project-to-date charges must be provided.

**5.4** The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

## **6. ACCESS AND RETENTION OF RECORDS**

**6.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

**6.2 Retention Period.** The Contractor agrees to create and retain records supporting services rendered or supplies provided for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

## **7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

## **8. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.



## **9. REQUIRED INSURANCE**

**9.1 General Requirements.** The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**9.2 Primary Insurance.** The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**9.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

**9.4 Additional Insured Status.** The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**9.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**9.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

## **11. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## **12. INTELLECTUAL PROPERTY/OWNERSHIP**

**12.1 Mutual Use.** All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for the State by Contractor under this contract or any program code, including site related program code, created, developed or prepared by Contractor under or in support of the performance of its obligations hereunder, including manuals, training materials and documentation (the “work product”).

**12.2 Title and Ownership Rights.** The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio and video), text and the like provided by the State (the “content”), but grants Contractor the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

**12.3 Ownership of Work Product.** Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State’s ownership of any work product.

**12.4 Copy of Work Product.** Contractor shall, at no cost to the State, deliver to the State, upon the State’s request during the term or at the expiration or termination of all or part of Contractor’s performance hereunder, a current copy of all work product in the form and on the media in use as of the date of the State’s request, or as of such expiration or termination, as the case may be.

**12.5 Ownership of Contractor Information.** Techniques, sub-routines, algorithms and methods or rights thereto owned by Contractor at the time this contract is executed and employed by Contractor in connection with the services provided to the State (the “contractor information”) shall be and remain the property of Contractor. The Contractor must provide full disclosure of any contractor information to the State prior to its use and prove its ownership. Contractor grants to the State a perpetual, irrevocable, royalty free, unrestricted right to use, modify, transfer and maintain the contractor information. Except as otherwise provided for in Section 12.3 or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware provided by Contractor.

### **13. PATENT AND COPYRIGHT PROTECTION**

**13.1 Third Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**13.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

### **14. CONTRACT OVERSIGHT**

**14.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

**14.2 Right to Assurance.** If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the contract under the terms and conditions or other rights and remedies available by law or provided by the contract.

**14.3 Stop Work Order.** The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

### **15. CONTRACT TERMINATION**

**15.1 Termination for Cause.** The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform the contract pursuant to Section 16, Event of Breach – Remedies.

**15.2 Bankruptcy or Receivership.** Voluntary or involuntary Bankruptcy or receivership by Contractor may be cause for termination.

**15.3 Non-Compliance with Department of Administration Requirements.** The Department of Administration pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract signing.

**15.4 Reduction of Funding.** The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313(3)).

## **16. EVENT OF BREACH – REMEDIES**

**16.1 Event of Breach.** Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- (a) products or services furnished by the Contractor fail to conform to any requirement of the contract, or
- (b) failure to submit any report required hereunder; or
- (c) failure to perform any of the other covenants and conditions of the contract, including beginning work under this contract without prior Department of Administration approval.

**16.2 State's Actions in Event of Breach.** Upon the occurrence of any event of breach, the State may take any one, or more, or all, of the following actions:

- (a) give the Contractor a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the Contractor notice of termination;
- (b) give the Contractor a written notice specifying the event of breach and suspending all payments to be made under this contract and ordering that the portion of the contract price, which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the event of breach, shall never be paid to the Contractor;
- (c) set off against any other obligation the State may owe to the Contractor any damages the State suffers by reason of any event of breach;
- (d) treat the contract as materially breached and pursue any of its remedies at law or in equity, or both.

## **17. WAIVER OF BREACH**

No failure by the State to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other breach on the part of the Contractor.

## **18. STATE PERSONNEL**

**18.1 State Contract Manager.** The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints or any other issues regarding the contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

Gordy Conn  
118 N. Roberts  
Annex Building  
PO Box 200113  
Helena, MT 59620-0113  
Phone: 406-444-3170  
Fax: 406-444-4644  
[gconn@mt.gov](mailto:gconn@mt.gov)

**18.2 State Project Manager.** The State Project Manager will manage the day-to-day project activities on behalf of the State. The State Project Manager for each project will be identified in each Statement of Work (SOW) executed between the Contractor and purchasing State Agency.

## **19. CONTRACTOR PERSONNEL**

**19.1 Identification/Substitution of Personnel.** The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

**19.2 Contractor Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

To be determined by Contractor.

**19.3 Contractor Project Manager.** The Contractor Project Manager will manage the day-to-day project activities on behalf of the Contractor. The Contractor Project Manager for each project will be identified in each Statement of Work (SOW) executed between the Contractor and purchasing State Agency.

## **20. MEETINGS AND REPORTS**

**20.1 Technical or Contractual Problems.** The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of the contract.

**20.2 Progress Meetings.** During the term of the contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of the contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under the contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**20.3 Failure to Notify.** In the event Contractor fails to specify in writing any problem or circumstance with respect to the period during the term covered by Contractor's status report, it shall be conclusively presumed for purposes of this contract that no such problem or circumstance arose during such period, and Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for either claiming it is entitled to receive any amount (including without limitation damages or additional charges arising out of a breach by the State of any State obligation) with respect to any of Contractor's obligations hereunder in excess of those previously agreed to; or failing to complete any of Contractor's obligations hereunder. Submission by Contractor of the status reports shall not alter, amend or modify Contractor's or the State's rights or obligations pursuant to any provision of this Contract.

**20.4 State's Failure or Delay.** For a problem or circumstance identified in the Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the Parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. If the State does not agree as to the cause of such problem or circumstance, the Parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both Parties.

## **21. CONTRACTOR PERFORMANCE ASSESSMENTS**

**21.1 Assessments.** The State may do assessments of the Contractor's performance. Contractors will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**21.2 Record.** Completed assessments may be kept on record at ITSD and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

## **22. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

## **23. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

## **24. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

## **25. SCOPE, AMENDMENT AND INTERPRETATION**

**25.1 Contract.** This contract consists of 11 numbered pages, any attachments as required, SPB05-937B, as amended and the Contractor's RFP response as amended. In the case of dispute or

ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

**25.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

## **26. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**Montana Department of Administration  
Information Technology Services Division  
118 N. Roberts, Annex Building  
PO Box 200113  
Helena, Montana 59620-0113**

**(INSERT CONTRACTOR'S NAME)**  
**(Insert Address)**  
**(Insert City, State, Zip)**  
FEDERAL ID # **(Insert Number)**

BY: Jeff Brandt, Acting CIO

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Legal Content:

Approved as to Form:

\_\_\_\_\_  
Legal Counsel (Date)

\_\_\_\_\_  
Procurement Officer (Date)

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

\_\_\_\_\_  
Chief Information Officer (Date)  
Department of Administration